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9  
10 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. R-2085

13 TATIA H. GARDNER  
14 613 W. Provential Drive, #B  
Anaheim, CA 92805

**A C C U S A T I O N**

15 Respiratory Care Practitioner  
16 License No. 19312

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Respiratory Care Board of California,  
23 Department of Consumer Affairs.

24 2. On or about March 7, 1997, the Respiratory Care Board issued Respiratory  
25 Care Practitioner License No. 19312 to TATIA H. GARDNER (Respondent). The Respiratory  
26 Care Practitioner License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on March 31, 2008, unless renewed.  
28

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . . .”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.”

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500). . . .”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section  
3 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
4 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
5 accusation, information, or indictment.”

6 8. Section 3752.5 of the Code states:

7 “For purposes of Division 1.5 (commencing with Section 475), and this chapter  
8 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily  
9 injury shall be considered a crime substantially related to the qualifications, functions, or  
10 duties of a respiratory care practitioner.”

11 9. California Code of Regulations, title 16, section 1399.370, states, in  
12 pertinent part:

13 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
14 shall be considered to be substantially related to the qualifications, functions or duties of  
15 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
16 perform the functions authorized by his or her license or in a manner inconsistent with the  
17 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
18 those involving the following:

19 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
20 abetting the violation of or conspiring to violate any provision or term of the Act.”

21 “. . . .”

#### 22 COST RECOVERY

23 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

24 "In any order issued in resolution of a disciplinary proceeding before the board,  
25 the board or the administrative law judge may direct any practitioner or applicant found to have  
26 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
27 investigation and prosecution of the case. . . ."

28 11. Section 3753.7 of the Code states:

1 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
2 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
3 administrative, filing, and service fees."

4 12. Section 3753.1 of the Code states, in pertinent part:

5 "(a) An administrative disciplinary decision imposing terms of probation may  
6 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
7 associated with monitoring the probation."

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Crime)**

10 13. Respondent is subject to disciplinary action under section 3750, as defined  
11 by sections 3750, subdivision (d), 3750 subdivision (g), and 3752 of the Code, in that she was  
12 convicted of a crime substantially related to the qualifications, functions, or duties of a  
13 respiratory care practitioner. The circumstances are as follows:

14 A. On or about October 9, 2006, while as a passenger in a vehicle,  
15 respondent and "John Doe"<sup>1</sup> (the father of one of respondent's minor children)  
16 began to argue. During the argument, respondent hit John Doe on the lip causing  
17 his lip to bleed. John Doe stopped the vehicle and began to slap respondent. John  
18 Doe eventually walked away from the vehicle with respondent's 17 year-old  
19 daughter. Respondent went to the rear of the vehicle and retrieved a tire iron. She  
20 placed the tire iron on the floor board next to the front passenger seat. John Doe  
21 returned and sat down in the driver's seat. When John Doe saw the tire iron, he  
22 became angry and walked around to where Respondent was sitting in the front  
23 passenger seat. Respondent raised the tire iron with one hand over her head as  
24 John Doe opened the vehicle's door. John Doe stated, "What are you thinking,"  
25 and "what are you going to do," and he took the tire iron out of her hand.  
26 Respondent was subsequently arrested.

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28 1. The father's real name is not used in the Police Report.

1           B.       On or about October 11, 2006, a Criminal Domestic Violence  
2 Complaint was filed in Superior Court of California, County of Orange, North  
3 Justice Center, entitled *The People of the State of California v. Tatia Howan*  
4 *Gardner*, Case No. 06NM11923, charging respondent with Count 1- violating  
5 Penal Code section 273.5(a) [willful infliction of corporal injury], and Count 2 -  
6 violating Penal Code section 273a(b) [willful harm or injury to a child].

7           C.       On or about October 11, 2006, in the case entitled *The People of*  
8 *the State of California v. Tatia Howan Gardner*, Case No. 06NM11923, before  
9 the Superior Court of California, County of Orange, North Justice Center,  
10 Respondent was convicted, by her guilty plea, of violating Penal Code section  
11 273.5(a), a misdemeanor. Count 2 was dismissed.

12                               **SECOND CAUSE FOR DISCIPLINE**

13           **(Conviction of a Crime Involving Bodily Injury or Attempted Bodily Injury)**

14           14.       Respondent is further subject to disciplinary action under section 3750, as  
15 defined by 3752.5 and 3750 subdivision (g), in that she committed a crime involving bodily  
16 injury or attempted bodily injury, as more particularly described in paragraph 13, above, which is  
17 incorporated by reference as if fully set forth herein.

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26                               **DISCIPLINE CONSIDERATIONS**

27           15.       To determine the degree of discipline, if any, to be imposed on respondent,  
28 Complainant alleges that on or about September 7, 2001, in a prior disciplinary action entitled In

1 the Matter of the Accusation Against: Tatia H. Gardner before the Respiratory Care Board of  
2 California, in Case Number R-1565, respondent's license was publically reprimanded for having  
3 been convicted of the crime of discharging a firearm in public, a violation of Penal Code section  
4 246.3. That decision is now final and is incorporated by reference as if fully set forth.

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
7 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

8 1. Revoking or suspending Respiratory Care Practitioner License No. 19312,  
9 issued to Tatia H. Gardner;

10 2. Ordering Tatia H. Gardner to pay the Respiratory Care Board the costs of  
11 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
12 monitoring; and

13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: June 12, 2007

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17 Original signed by Christine Molina for:  
18 STEPHANIE NUNEZ  
19 Executive Officer  
20 Respiratory Care Board of California  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant  
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